

Public School Open Enrollment Technical Assistance Workshops

Open Enrollment & Special Education

**Wisconsin Dept. of Public Instruction
Spring 2000**

Can a student with disabilities participate in open enrollment?

- **Yes.**
- **Further, a student may not be denied participation in open enrollment because of her or his disability.**
- **However, a number of provisions of open enrollment are different for students with identified or suspected disabilities.**

How is open enrollment different for students who need special education?

- **Reasons for denial**
- **Transportation provisions**
- **Continuing involvement of resident school district**
- **Each review of IEP results in potential “review” of open enrollment eligibility**
- **Funding**

Overview

Receiving & Handling Applications

Acting on Applications

Appeals

The Open Enrolled Student

Funding

Receiving & Handling Applications

- **Determine special education status**
- **Resident district provides records**
- **Nonresident district provides tuition estimate**

Determining special education status

- **Two ways for the nonresident district to determine student's special education "status":**
 - Application form
 - Request for records

Application form

- **Three yes/no questions for parents on application form:**
 - Does the student receive special education?
 - If yes, does the student have an individualized education program?
 - Has the child been referred for a special education evaluation that has not yet been completed?

Request for records...

- **Parent's signature on form grants permission for the nonresident school district to:**
 - “request from the school my child attends information about whether my child has been referred for special education and information about my child's special education program, including a copy of the IEP.”

...Request for records

- **A form for requesting records is printed on the back of the copy of the application form that is sent to the resident school district.**
- **It is recommended that a records request be sent for all students, whether or not the parent indicated that the child receives special education or has been referred for an evaluation.**

...Request for records

- If the student is not currently attending school in the resident school district, the request for records may be sent to the public school district the child is attending or which is providing the special education or related services.**
- It is not recommended that special education records be requested from private schools.**

Providing the records...

The resident district should send:

- **Information about whether the student has been referred for an IEP team evaluation but has not yet been evaluated**
- **A copy of the student's current IEP**

...Providing the records

- **If the student is no longer receiving special education, but without a finding that the student no longer needs special education, provide a copy of the most recent IEP or evaluation. This most commonly occurs if the student is currently enrolled in a private school or home-based private education program.**

...Providing the records

- **The resident school district must provide the records promptly. If the district cannot provide them within 5 working days, the district should notify the nonresident district of the date they will be provided.**
- ***It is in the interest of the resident school district to promptly provide these records.***
The nonresident school district cannot provide the required tuition estimate without the records.

Tuition estimate...

- **No later than March 15, the nonresident school district must provide to the resident school district an estimate of the tuition cost for providing the special education and related services required by the child's IEP.**
- **The amount may be either:**
 - tuition calculated according to s. 121.83, Stats., or
 - an amount agreed to by the two school districts

...Tuition estimate

- **If the nonresident district cannot provide the estimate by March 15, it should contact the resident district and notify of the date on which the estimate will be provided.**
- **If the resident district does not receive the estimate (or a phone call) by March 15, it should call the nonresident district and ask for it--then follow up in writing. Lack of an estimate *will not* be a reason to uphold a denial based on undue financial burden.**

Acting on Applications

Nonresident School District

Reasons for denial...

- **Same as all other students**
 - Lack of space
 - Current expulsion
 - Expulsion within 3 years for specified violent conduct
 - Racial imbalance

...Reasons for denial

- **Specific to special education**
 - Special education and related services required by the IEP are not available in the district
 - No space in the special education or related services required by IEP
 - The student has been referred for a special education evaluation but the evaluation has not been completed

Special education & related services not available

- **All decisions must be based on the availability of the special education and related services described in the student's IEP.**
- **Do not make assumptions about which “program” the student requires based simply on the student's identified disability.**

Space not available in the special education and/or related services

- **As with regular education space issues, there must be a process to determine whether there is space for the student in the special education “program.”**
- **This must include consideration of the special special education and related services described in the IEP.**
- **The district must make each decision individually. A school district that routinely denies all applications from students who need special education will be vulnerable on appeal.**

Referred but not evaluated

- **“Not yet evaluated” means:**
 - A determination about whether the student has a disability that requires special education has not yet been made, or
 - The IEP has not been completed.

Special education provided by CCDEBs, CESAs or 66.30

- **If a nonresident school district participates in a CCDEB or CESA program for the special education/related services the student needs, the nonresident district must contact the CCDEB, CESA, or school district to determine whether space is available.**

Conditional acceptances should not be made...

- **If it is possible for the resident district to complete the IEP evaluation in time for both school districts to act on the application, the district should do so.**

...Conditional acceptances

- **If this is not possible, the nonresident district must either:**
 - Approve the application (but may later deny it if the IEP requires SE or RS not available or no space)
 - Deny the application and suggest the parent reapply the following year.

Students from private schools and home-based private programs...

- **If an applicant is currently enrolled in a private school or home-based program and,**
- **has previously received special education or been identified as needing special education,**
- **but not does have a current IEP ...**

- ... it is recommended that the student's application be handled as if the student has been "referred but not evaluated" unless there has been a finding that the student no longer needs special education.**
- The decision should not be made based on an outdated IEP.**

Acting on Applications

Resident School District

Reasons for denial...

- **Same as all other students**
 - Percent limit
 - Racial imbalance
- **Specific to special education**
 - The tuition cost of the special education program imposes an undue financial burden on the resident school district.

Undue financial burden...

- **If the costs of the special education program or services required in the IEP for a child with a disability whose parent has submitted an open enrollment application, as proposed to be implemented by the nonresident school district, would impose upon the child's resident school district ...**

- ***... an undue financial burden in light of the resident school district's total economic circumstances, including***
- ***its revenue limit***
- ***its ability to pay tuition costs for the pupil and***
- ***the per pupil special education costs for children with disabilities continuing to be served by the resident school district ...***

- **... the child's resident school board may notify the child's parent and the nonresident school board by the first Friday following the first Monday in April [April 7,2000] that the pupil may not attend the nonresident school district to which the child has applied.**

Key Elements

- **costs of the special education program and services required in the IEP**
- must make an individual determination for each child based on the cost of implementing the student's IEP

Key Elements

- **as proposed to be implemented by the nonresident school district**
 - may not deny simply because the nonresident school district would implement the IEP differently or because program can be provided in resident school district
 - must have a detailed estimate of tuition costs from the nonresident school district

Key Elements

- would impose an *undue* financial burden
 - *while it may be argued that any payment of tuition would impose a financial burden, the district must examine its economic circumstances and determine whether that burden is “undue”*

Key Assumptions

- **The statute clearly intends that students who need special education are eligible to participate in open enrollment--a resident district may not deny a student the ability to transfer simply because the district must pay tuition for the student**

Key Assumptions

- **The department's interpretation is that undue financial burden is a subjective determination not able to be defined by a simple formula--it is unique to the circumstances of each school district.**
- **However, it is possible to establish a uniform method of determining the net cost to the district and to define certain basic elements for examining the effect on the district's total economic circumstances.**

“Test” is on Appeal

- **The school board’s decision is not reviewed by the Department unless the parent appeals. In reviewing the appeal, the Department will determine:**

- Whether the decision was arbitrary
 - must have a process to consider effect of tuition cost on district.
 - there is no process defined in statute or rule for determining undue financial burden.
- Whether the decision was reasonable
 - result of process must be consistent, fair and reasonable.

Emphasis on Process

- **Review the effect on the special education programs in the resident school district**
- **Review the effect on the district's total economic circumstances, including:**
 - its revenue limit and
 - its ability to pay the tuition costs
- **Based on the above calculation and review, determine whether the cost is an undue financial burden**

Review the Effect on Special Education Programs...

- **Is there a significant increase in the per pupil cost of the special education program as a result of the student leaving?**
- **What is the district's ratio of special education expenditures to total instructional expenditures?**

- **Is the current pupil teacher ratio within the range of the optimal* pupil/teacher ratio of the school district?**
- **Would the student's transfer have a negative, positive or no effect on the pupil/teacher ratio compared to the optimal* pupil/teacher ratio?**

****"optimal" is the desired pupil/teacher ratio defined by the school board***

Review the Effect on Total Economic Circumstances

- **Revenue Limit**
- **Ability to Pay**

- **Are district enrollments increasing so as to provide more revenue for the district?
Increasing so quickly that construction will be necessary? Decreasing so that revenue is decreased? Flat?**
- **Does the district have flexibility to levy more under the revenue limits?**
- **Does the district have an undesignated fund balance from which it could fund the tuition?**
- **Does the district take in more or less revenue than it expends?**

- **Is the district eligible for a transfer of service revenue limit exemption for the student's tuition costs?**
- **Are there other factors that the school district believes is relevant to making the decision about whether the net open enrollment tuition cost imposes an undue financial burden?**

Transfer of service...

- **If the student is applying for open enrollment due to a move into the resident school district, and**
- **The student was receiving special education prior to the move and,**
- **Will be receiving special education after the move...**

...The resident district may be eligible for a transfer of service exemption to the revenue limits.

- Exemption = the tuition amount paid to the nonresident school district**
- Must file request no later than July 1 to receive exemption for the current school year.**

Determine Whether the Cost is An Undue Financial Burden

- There is no “magic” number or formula and no piece of data can be automatically assumed to be either positive or negative to an argument of undue financial burden.
- The school board must review the data and make a determination. **If the decision is appealed, the department must review the determination based on the information the district provides.**

DPI Form

- **The DPI has created a form for submitting the record of the decision in case of an appeal. This form requests a variety of data intended to elicit information about effect of the transfer on the “total economic circumstances of the school district.**
- **It is recommended that school districts use this form to gather data to *assist the school board in making the decision.***

Appeals

Defending the School Board's Decision

The Denial Notice

- **Provide all reasons denial was made**
- **Write it so that the parent can understand it**
- **Informative letters can thwart an appeal**
- **Notice of Right to Appeal**

Reasons School Boards are not upheld

- **Misapplication of law**
- **Lack of information provided to the department**
- **Lack of a process used to make determinations**
- **Lack of *evidence* of a process used to make determinations**

Special Education Space

- **“No program available, no services available or no room”**
- **Provide evidence that each applicant and his or her needs were considered individually**
- **Provide evidence that the IEP was obtained and considered**

Special Education Space

- ✌️ **Avoid blanket statements, such as “program is full”. Services required by the individual’s IEP must be considered, not “label”**
- ✌️ **Be sure enrollment numbers you use are the same as what has been submitted to DPI for other purposes, if different, explain.**

Undue Financial Burden

- Only available as a reason to deny transfer *OUT* of district
- Document all factors you considered in making this determination, include cost savings, continued costs, additional costs, etc.
- Utilize the DPI's Appeal worksheet & provide all information requested

Compiling the Record

- **Submit all documentation - if in doubt, include it**
- **File a “brief”**
- **If documentation is unclear or not specific, use affidavits to explain process**
- **Provide evidence of your process, which must include a winnowing and sifting of information**

Key Ingredients of Responding to an Appeal

- **A copy of the application, stamped with the date received**
- **A copy of the denial notice, including proof of service upon the pupil/parents**
- **A copy of the school board policy and administrative rules or procedures**

Key Ingredients of Responding to an Appeal

- **Minutes, tape recording or transcript of all meetings or hearings where open enrollment was discussed either generally or as it pertains to the appellant**
- **Documentation to support space or financial burden determinations**

Key Ingredients of Responding to an Appeal

- **Supplemental information that was used to make determinations, including previous reports, studies, etc. that the board or administration relied upon and affidavits to explain procedures that were used**
- **Respond to issues raised by the parent in the appeal letter, even if they do not seem to be relevant**

“Settling” an appeal

- **If it is possible to resolve an appeal informally, school boards are encouraged to do so.**

When to settle

- **Settlement might be appropriate if:**
 - Circumstances have changed or more information is available concerning the student's special education or reasons the application was denied.
 - The nonresident and resident school district have agreed to an amount other than tuition that would alleviate the “undue financial burden”

What is a “settlement”

- **A settlement occurs when the school district and the parent reach an agreement to resolve the issue to the satisfaction of both parties.**

Requirements of a settlement

- **Settlement must assure that the student receives FAPE**
- **The settlement must not waive any current or future rights of the student**
- **Settlement must be equitable for all similarly-situated students**

Examples of settlements...

- **School district reverses decision**
- **Parent withdraws appeal**
- **Parent and school district reach an agreement that provides FAPE in a manner satisfactory to both**

...Examples of settlements

- **Student's IEP may be reviewed and/or revised*, resulting in:**
 - a change in the method of implementing the special education and related services required in the IEP so that it is available in the nonresident district or less costly to the resident district
 - an agreement for the resident district to provide FAPE in a manner satisfactory to the parent

****Any revision must provide FAPE***

...Examples of settlements

- If student is required to return to resident district due to a new or revised IEP, agreement may permit student to remain in the district for the remainder of the current school year with provision for the next IEP review to take place during late spring or summer--so change may be less disruptive.***

****As long as FAPE is provided***

The Open Enrolled Student

Responsibility for FAPE

Specific Open Enrollment Provisions

Responsibility for FAPE

- Nonresident district is responsible for the *provision* of FAPE

however

- Resident district is responsible *to pay for* special education program, and
- Resident district counts student in December 1 federal child count

Specific open enrollment provisions

Transportation

**Referral for Special Education
Evaluation**

Creating and Revising IEP

Transportation

Not Required by IEP - Same as “regular” education

- Parent responsible to provide
- Either district may provide
- Nonresident district may not pick up student w/in boundaries of resident district

Required by IEP

- Nonresident district responsible to provide
- Cost billed to resident district as related service
- Nonresident district may (must) pick up student w/in boundaries of resident district

Referral for special education evaluation

- **Nonresident district notifies resident district of referral or vice versa**
- **Nonresident district appoints IEP team**
- **IEP must be developed “in collaboration with” resident district (recommend including representative of resident district on IEP team)**

Newly-developed IEP (nonresident district)...

- **Are the special education and related services available in the nonresident district?**

If yes,

- **Is there space in the special education and related services in the nonresident district?**

...Newly-developed IEP (nonresident district)

If yes,

- **Nonresident district calculates estimated tuition and notifies resident district.**

...Newly-developed IEP (nonresident district)

If no,

- Nonresident district notifies parent and resident district that student must return to resident district. Parent may appeal.**

Newly-developed IEP (resident district)...

- **Is tuition cost an “undue financial burden” to resident district**

If no,

- **Student may continue to attend nonresident district, resident district pays tuition**

...Newly-developed IEP (resident district)

If yes,

- **Resident district notifies parent and nonresident district that student must return to resident district. Parent may appeal.**

Revision of IEP

- **Provisions relating to newly-developed IEP also apply to an IEP that is “revised” after the student begins attending the nonresident school district.**
- **Since each child’s IEP must be reviewed at least annually, it may be “revised” at least annually.**

Requiring student to return to resident district...

- **Neither statute nor rule specifies when student must be returned to resident district if special education or space not available or if tuition cost is undue financial burden...**

- **Therefore, it is assumed that student can be required to return immediately upon notification.**
- **However, if districts wish to permit student to remain until end of quarter, semester or year, or pending appeal, they may do so.**

...Requiring student to return to resident district

- On appeal, DPI *will not review* whether “revision” of IEP was significant enough to trigger requirement to return.
- If return was required due to non-availability or lack of space, DPI may consider changes in *district* circumstances.
- If return was required due to undue financial burden, DPI may consider changes in *district’s economic* circumstances.

Funding

Membership & Reporting

No Aid Adjustment

Tuition or “Other Amount”

State Categorical Aid

Federal Child Count Aid

Membership & Reporting

- **The resident district counts the student in membership for both state aid and revenue limit purposes by including the student in the “resident” column on the September and January membership reports.**
- **The nonresident district reports the student in the “nonresident” column on the September and January membership reports.**

No Aid Adjustment

- **No aid adjustment will be made for open enrolled students who are receiving special education in the nonresident school district.**
- **If the resident and nonresident district agree to an amount based on the amount of the aid transfer, the entire agreed-upon amount must be paid by the resident district to the nonresident district.**

Tuition or Other Amount

- **Instead of the aid adjustment, the resident district pays to the nonresident district either:**
 - Tuition calculated according to s. 121.83 (use the DPI tuition worksheet)
 - or
 - An amount agreed to by the school board of the two school districts

Other amount...

- **There are no statutory or rule requirements for the “other amount” that may be agreed to. Whatever is agreeable to the two school districts is permitted under the statutes.**

...Other amount

- **No report is filed with the DPI as to what this agreement is.**
- **However, it is recommended that the agreement be in writing and specify the method of computing the other amount, so that there are no misunderstandings and so the agreement can be the basis for agreements in the following years.**

...Other amount

- **Some examples of “other amounts”**
 - For students receiving specific services such as speech/language services, the amount might be the regular education OE transfer amount (\$4,689 for 1999-2000) plus an appropriate amount for the speech/language services.

...Other amount

- Some nonresident school districts have agreed to accept only the OE regular education tuition transfer amount. This might occur when the student fills an empty seat in an existing class or program with no identifiable additional costs.

...Other amount

- A nonresident school district may calculate an amount that includes only instructional costs plus instructional support, pupil support and co-curricular costs; excluding fixed costs such as maintenance, district and building administration, debt service, etc.

Payment Schedule...

- **For tuition calculated under s. 121.83:**
 - Annually, on or before Sept 1, the agency of service shall file a tuition claim for each nonresident pupil for whom services were provided during the preceding school year.
 - A written agreement may provide for the prepayment in installments of up to 75% of the estimated tuition during the school year in which the services are provided.

...Payment Schedule

- **For an “other amount” agreed to by the districts, the agreement should include a payment schedule.**

Payment for continuing students

- **Upon review/revision of each student's IEP (at least annually), the nonresident district should send a estimate of that year's tuition cost to the resident district.**
- **The tuition method/agreement can be renegotiated each year or as often as the districts decided is necessary.**
- **Communication is the key to avoiding misunderstanding.**

State Categorical Aid

- **The nonresident school district claims the state categorical aid for the special education program.**
- **If tuition is calculated under s. 121.83, the nonresident district must “rebate” a prorated portion of the state categorical aid when it is received.**
- **If the two districts agree to a different amount, the agreement should specify how state categorical aid will be handled.**

Federal Child Count Aid

- **The resident school district counts the student in the December 1 federal child count and receives the federal child count aid.**

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